

National Freedom of Information Officer
U.S. EPA, Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

May 29, 2015

RE: FOIA REQUEST

VIA EMAIL & FIRST CLASS MAIL

Dear FOIA Officer:

On June 14, 2005, the U.S. Environmental Protection Agency (EPA) published a final rule which created a manufacturer-run in-use emissions testing program for 2007 and later model year heavy-duty diesel. The rule implemented a Consent Decree which EPA obtained to resolve a complaint it had filed against these manufacturers for Clean Air Act violations. This final rule purports to implement the key elements of an agreement with the Engine Manufacturers Association and the California Air Resources Board to ensure that the benefits of more stringent emission standards are realized under real-world driving conditions.

In its “Final Rule on In-Use Testing Program for Heavy-Duty Diesel Engines and Vehicles” (EPA420-F-05-021 <http://www.epa.gov/oms/regs/hd-hwy/inuse/420f05021.pdf>) the Agency declared:

“The in-use test data, which have never been collected on this large a scale, will be used by EPA to assure that emission standards are being met, and by manufacturers to improve their engine designs. The data will also be available to the public.”

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests the results of this in-use emissions testing. Specifically, we request the following:

- All of the in-use testing results described in EPA Guidance Document Cisd-06-011 (HD) <http://www.epa.gov/oms/cert/dearmfr/cisd06011.pdf>), consisting of the

“... engine family, model, and rating identification; description of test route and test conditions; mass emissions and work performed each at a one hertz interval; emissions results (for each valid NTE [the Not-To-Exceed Standards] event); vehicle pass ratio; and any other information needed to calculate the summary emissions results and the NTE zone for that engine” for each –

- Submitted XML file (or other EPA-authorized format) from the manufacturers Daimler (Detroit Diesel), Cummins, Navistar Paccar, Volvo, Isuzu and Hino for each engine family chosen by EPA for testing under the manufacture in-use program.

We seek this data for the duration of this program which we understand to include each in-use testing calendar year from 2009 through and including 2014.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material consists of unprecedented, large scale realistic on-the-road emission results. The information will help the public to understand whether and how well EPA has implemented the requirements of the Clean Air Act through its highly touted Consent Decree. The requested records are the most meaningful documents –the smoking gun, as it were – that could be requested on this topic.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested information concerns the actual on-the-road emission results that heavy diesel extent manufacturers are required to report to EPA. The public at large has an acute interest in knowing whether federal enforcement and regulatory efforts are effective and how that effectiveness is documented.

The general public also has a keen interest in any factor bearing on reducing air pollution to which it would otherwise be exposed. Such emissions have documented adverse public health and economic effects. The requested information will show how well the Clean Air Act objectives underlying the 2005 Consent Decree have been met.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

As the Agency well knows from past direct experience, PEER has a long track record of attracting media and public attention to the internal records of federal agencies, including EPA. Moreover, PEER believes that EPA also considers this information is of interest to the general public as indicated by its repeated official statements that these test results would be made public.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

As indicated by the Agency’s own reporting guidance, the requested documents are an incomparable and unique trove of actual on-the-road (as opposed to dynamometer testing in a laboratory) results. This real-world track record represents a major contribution to the public’s understanding of how well EPA vehicle emissions oversight is succeeding with this class of especially high-polluting engines.

In addition, the requested material, coupled with other material already in the public domain will allow industry observers and their large readerships to monitor the emission-reducing efficacy of particular technologies.

Finally, we believe these records will help the public assess the value of a negotiated, cooperative Consent Decree over a purely externally imposed enforcement outcome.

5. The extent to which disclosure will serve the requestor’s commercial interest; and 6. The extent to which the identified public interest in the disclosure outweighs the requestor’s commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Cordially,

Jeff Ruch
Executive Director